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SENATE NATURAL RESOURCES  
SENATE NO. 7  
DATE 4-10-07  
BILL NO. HB 831

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April 10, 2007

Senate Natural Resources and Energy Committee  
Montana Legislature  
P.O. Box 201706  
Helena, MT 59620-1706

**RE: HB 831**

Dear Committee:

Please accept these comments to HB 831 on behalf of our client Hollowtop Ranch ("Hollowtop"). Hollowtop is the owner and operator of a ranch near Pony, Montana that relies upon surface and ground water for its irrigated agriculture. While Hollowtop supports many of the goals of this proposed legislation, Hollowtop reluctantly opposes the bill in its current form.

Hollowtop believes that several concepts have been lost in the debate over this legislation. These concepts provide an important backdrop to considering what legislation is necessary to fix the issues that have resulted in the current defacto moratorium on the processing of groundwater applications in closed basins.

- The legislative effort that prompted HB 831 is Montana Supreme Court's decision in the Montana *Trout Unlimited v. Montana Department of Natural Resources and Conservation* case. In *Trout Unlimited*, the Supreme Court only interpreted the terms "immediately or directly connected to surface water" for the purposes of the basin closure laws. The court ruled that DNRC cannot process water right applications in closed basins that do not address both induced infiltration and prestream capture of tributary ground water.
- Based upon the decision in *Trout Unlimited*, the DNRC has opposed a de facto moratorium on the processing of groundwater applications. Hollowtop has been the victim of this moratorium when it recently submitted an application that demonstrated groundwater withdrawals would not affect surface streams for at least 28 years. DNRC denied the application.
- The purpose of basin closures is to protect senior water right owners. The basin closures are not intended to be comprehensive groundwater permitting programs.

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- The various sub-basins that have been closed by the legislature are only closed temporarily. Once the claims in those basins have been evaluated under the adjudication process, the basin closures will be lifted. Because basin closures are temporary, Hollowtop believes that DNRC is erroneously interpreting the statute by effectively willing to consider any time limits as to when surface streams will be affected by new groundwater withdrawals.

Based upon these concerns, Hollowtop opposes Section 14 of the proposed legislation because it does not set time parameters for the showing of net depletion of surface water. As the bill currently is structured, a new application in a closed basin would require an evaluation far into the future, possible indefinitely. Hollowtop submits that a better option would be to set a standard that requires no net depletion prior to the expiration of the basin closure. This would serve the dual purposes of adding an inducement to the Water Court to completing the water rights adjudication, while at the same time protecting senior water right owners from the immediate effects of new groundwater withdrawals.

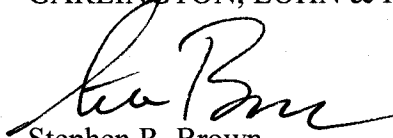
Hollowtop also submits that Section 19 should be deleted because it intrudes into water quality issues under the jurisdiction of the Montana Department of Environmental Quality. It potentially violates the single subject prohibitions by addressing water quality concerns in water quantity legislation. Section 19 would impose environmental restrictions that are stricter than is currently required by the DEQ water quality rules.

Based upon these concerns, Hollowtop respectfully opposes the bill in its current form.

Thank you for the opportunity to submit these comments.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP



Stephen R. Brown

SRB:kaw